

### **DETAILED ACTION**

Applicants' arguments, filed 5/18/11, have been fully considered. Rejections and/or objections not reiterated from previous office actions are hereby withdrawn. The following rejections and/or objections are either reiterated or newly applied. They constitute the complete set presently being applied to the instant application.

#### ***Claim Rejections - 35 USC § 103***

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

**Claims 1-3 and 10-14** stand rejected under 35 U.S.C. 103(a) as being unpatentable over Palmason et al (WO 97/02050, see IDS dated 2/10/06) in view of Wursch et al (The Role of Viscous Soluble Fiber in the Metabolic Control of Diabetes, Diabetes Care, V. 20, No. 1 (1997) pp1774-1780, see IDS dated 11/02/06).

Applicants assert Palmason is directed to the total carbohydrate-dietary fiber in the diagnostic test meal, not the relative amounts of each particular component.

Examiner disagrees. As noted in the Office Action dated 11/18/10, Palmason teaches working embodiments which contain combinations of both complex and simple saccharides. Further, Palmason teaches starch plays an important role in testing as the composition Ensure® was void of starch. As such, in addition to Ensure®, patients were given solid test meals in the form of a bar, as disclosed in Table I of Palmason. (pg 33) Table I discloses the components of the solid bar, and notes the presence of carbohydrates due to oat starch and sugars. Additionally, other formulations are

disclose which break down the starches and sugars (pg 18 lines 9-20 and pg 27 lines 28-67). Based on the disclosure of the specific components, while the overall carbohydrate amount is disclosed to be critical, the amount of each component likewise taught to be critical as they are all required in order to reflect regular dietary conditions. With such criticality present, the skilled artisan would find it obvious to optimize both the total amount of carbohydrates in the test meal as well as the amounts of each.

**Claims 8 and 9** stand rejected under 35 U.S.C. 103(a) as being unpatentable over Palmason et al (WO 97/02050, see IDS dated 2/10/06) in view of Wursch et al (The Role of Viscous Soluble Fiber in the Metabolic Control of Diabetes, Diabetes Care, V. 20, No. 1 (1997) pp1774-1780, see IDS dated 11/02/06), the combination further in view of Fuisz (US 5,422,136).

Applicants assert Fuisz does not remedy the deficiencies of Palmason.

Examiner disagrees as the asserted deficiencies of Palmason are discussed above. As no arguments are presented in regards to the addition of Fuisz, this rejection is maintained for reasons of record.

### ***Conclusion***

No claims allowed.

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to BENJAMIN PACKARD whose telephone number is (571)270-3440. The examiner can normally be reached on M-R 8-5 EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Frederick Krass can be reached on 571-272-0580. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Benjamin Packard/  
Examiner, Art Unit 1612

/Frederick Krass/  
Supervisory Patent Examiner, Art Unit 1612